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Domestic Relations: Validity of Contract Releasing Husband of Duty to Support his Wife

Robert T. McGraw

in a garage and then drive directly home after school. The father knew of the son's previous disobedience. On this occasion, the son took the car out of the garage before school started and while driving "around town" struck and injured the plaintiff. The father was held liable under these instructions: "If the son had deviated materially and substantially from the instructions so given him, then the defendant would not be liable, but if the deviation had been only slight, then such deviation would not of itself relieve the defendant from liability." This case, too, appears to apply a rationale somewhat different from the majority of the cases previously discussed.

In Wisconsin, the owner of an automobile is not liable whether he gives his consent to his child to drive or not, unless there can be proved a master and servant or principal and agency relationship. In *Geffert* v. *Kayser,* 179 Wis. 571, 192 N.W. 26 (1923), the son procured his father's permission to take the car for the purpose of taking a friend to a dance. He was on his way from his father's home to the residence where he was to call for her at the time the accident occurred. The court, in holding the father not liable, stated that unless the son is acting as an agent of the father, the father is not liable. See, also, *Crosset* v. *Goelzer,* 177 Wis. 455, 188 N.W. 627 (1922); *Hopkins* v. *Droppers,* 184 Wis. 400, 198 N.W. 738 (1924).

From the foregoing, it is apparent that, in states other than those applying the Wisconsin rule, it is difficult to determine the liability of a parent for accidents occurring while a child is driving the parent's automobile. The tenor of decisions sems to be that a "use" of the car other than that authorized by the parent relieves him from liability for resulting injury, but a mere disobedience of "instructions" as to the mode of driving, carrying of passengers, and the like, is not sufficient to free the parent from liability, either under pertinent automobile statutes or the common law. It is difficult, however, to determine what is a forbidden "use" and what is merely a disobedience of "instructions."

ROBERT S. WRZESINSKI.

Domestic Relations—Validity of Contract Releasing Husband of Duty to Support his Wife.—In 1930, pending a separation action, the parties entered into an agreement whereby the wife released certain property interests and sole custody of the children. The husband agreed to pay a lump sum of $3,000 and the wife agreed to accept this payment "in full satisfaction for all claim of support and maintenance of all kind." The money was paid and the separation action was abandoned. Ten years later the wife brought this action for divorce and petitioned for alimony. The trial court granted her $7 a week alimony, but the husband objected to this and claimed he was released forever from the duty of support because of their former agreement. The Appellate division affirmed the divorce decree but modified it by striking out the provision for support on the ground that alimony was barred by the separation agreement between the parties.

Held: Judgment of the Appellate division reversed and that of the trial court affirmed. The existence of a separation agreement in full satisfaction of all claim of support does not preclude an award of alimony. Although husband and wife may freely contract with one another, "a husband and wife cannot contract . . . to relieve the husband from his liability to support his wife." (Domestic Relations Law, Consol. Laws (1896) Ch. 15 #51.) The court considered the contract to be an attempt by the husband to purchase exemption from his duty of support. The agreement was held not to be within the rule

that where a husband and wife agree upon the measure of support which they think proper for the benefit of the wife, the court will not compel the husband to support the wife in a greater sum. *Kyff* v. *Kyff*, 35 N.E. (2d) 655 (N.Y. 1941).

Although the law in general allows husband and wife to contract freely with one another, a nice question is raised when the contract involves a release of the husband's duty to support his wife. The solution is still in controversy in many jurisdictions of the United States.

Some jurisdictions, such as New York, hold these contracts to be void because of statutory provision to that effect. *Golden* v. *Golden*, 17 N.Y.S. (2d) 76 (1939); *Pignatelli* v. *Pignatelli*, 8 N.Y.S. (2d) 10 (1938); *Dworkin* v. *Dworkin*, 286 N.Y.S. 982 (1936); *Reischfield* v. *Reischfield*, 166 N.Y.S. 898 (1917); *Gray* v. *Butler*, 102 N.Y.S. 106 (1907); *In re Kopf's Estate*, 132 N.Y.S. 719 (1911); *Carling* v. *Carling*, 86 N.Y.S. 46 (1903). In North Carolina such contracts have to conform to a statute which requires the wife to be separately examined before an official who attaches a certificate to the contract stating, "same is not unreasonable or injurious to her." (North Carolina Revisal Sections—2107); *Archbell* v. *Archbell*, 158 N.C. 408, 74 S.E. 327 (1912). In *Reischfield* v. *Reischfield, supra,* the contract called for repayment of a $300 loan from the wife's father, and payment of $85 storage charges on wife's furniture in return for release of husband's duty for future support. And in *Pignatelli* v. *Pignatelli, supra,* the contract made no provision at all for the support of the wife.

Equity seems to play a prominent role in the reasoning of some courts which hold contracts releasing the husband from liability to support void. *Tirrell* v. *Tirrell*, 232 N.Y. 224, 133 N.E. 569 (1921); *Uhler* v. *Uhler*, 128 N.Y.S. 963 (1911); *Drummond* v. *Drummond*, 171 N.Y.S. 477 (1918); *Perrin* v. *Perrin*, 250 N.Y.S. 588 (1931); *Bowers* v. *Hutchinson*, 67 Ark. 15, 53 S.W. 399 (Ark. 1899); *Sparks* v. *Sparks*, 215 Ky. 508, 284 S.W. 1111 (1926). The agreements are examined to ascertain whether they are unfair, inadequate, inequitable, imprudently or improvidently made. If they are found to be such they are held void. The case of *Sparks* v. *Sparks, supra,* shows the line of reasoning: "Separation agreements are upheld when untainted by fraud, undue influence or coercion and when the terms are fair, reasonable and equitable, considering the circumstances of the parties at the time they are made." In *Bowers* v. *Hutchinson, supra,* the consideration offered for the release of husband's duty to support was $650. The contract in *Perrin* v. *Perrin, supra,* provided for such release upon payment of $1,000. And in *Uhler* v. *Uhler, supra,* the consideration for the release was the payment of $425. *Drummond* v. *Drummond, supra,* concerned a contract providing for a release upon payment of $5 a week. All the contracts were considered to be "inequitable" and void.

Public policy is the deciding factor in the opinions of some courts. *Lyons* v. *Schanbacher*, 316 Ill. 569, 147 N.E. 440 (Ill. 1925); *Van Koten* v. *Van Koten*, 323 Ill. 323, 154 N.E. 146 (Ill. 1926); *Vock* v. *Vock*, 365 Ill. 432, 6 N.E. (2d) 843 (Ill. 1937); *Berge* v. *Berge*, 366 Ill. 228, 8 N.E. (2d) 623 (Ill. 1937); *Hill* v. *Hill*, 74 N.H. 288, 67 Atl. 406 (N. Hamp. 1907); *Law* v. *Law*, 197 S.E. 272 (Ga. 1938). In the *Law* case, *supra,* the court stated the policy to be that "the contract is void and no bar to the wife's right to alimony because it tended to promote dissolution of marriage relation." *Lyons* v. *Schanbacher, supra,* typifies the public policy reasoning: "Husband and wife may contract with one another as to their mutual property rights but the husband cannot by contract, either before or after marriage, relieve himself of the obligation imposed upon him by law to support his wife."

Despite the strong reasoning advanced by the courts holding contracts absolving a husband of his duty to support his wife void, there are decisions holding such contracts valid and binding upon the parties. *In re Tierney's Estate,* 266 N.Y.S. 51 (1933); *Greenfield* v. *Greenfield,* 146 N.Y.S. 865 (1914); *Goldman* v. *Goldman,* 282 N.Y. 296, 26 N.E. (2d) 265 (1940); *Hallam* v. *Hallam,* 298 Ill. App. 445, 19 N.E. (2d) 101 (1939); *Reardon* v. *Woerner,* 97 N.Y.S. 747 (1906); *Garlock* v. *Garlock,* 5 N.Y.S. (2d) 619 (1938); *Winter* v. *Winter,* 191 N.Y. 462 (1908). In *Greenfield* v. *Greenfield, supra,* the court held valid a separation agreement of $2,500 for a wife's release of all claims, present and future, against her husband's support. In *Reardon* v. *Woerner, supra,* the court considered a contract in which the husband agreed to pay a trustee for the wife's benefit to be valid. And in *Garlock* v. *Garlock,* supra, the agreement provided that the husband pay $15,000 annually in return for a release of his liability for further support of his wife; this was held to be binding. The underlying basis for the decisions holding support contracts to be valid is probably expressed in *Winter* v. *Winter, supra*: "She (the wife) is the best judge of what she needs for support and the amount may be fixed and settled by agreement made after actual separation without violating any principal of law or any statute now in existence." It is interesting to note that the New York cases cited above were decided in the face of a statute directly declaring such contract to be void. *Hallam* v. *Hallam, supra,* gives a logical reason for the side-stepping of this statute, "Hallam did not seek to avoid his obligation, but, on the contrary met it by creating this annuity as agreed."

The amount of money provided in a contract for the support of the wife seems to be of primary importance in determining the validity of a settlement. If the amount is ample, considering the circumstances of the parties, then it is likely to be upheld. If not, then the settlement is likely to be declared void either as against public policy or statute, or because it is "inequitable." In the last analysis it would seem that the courts decide whether a settlement is fair and adequate under all the circumstances. If they feel that a settlement is inadequate, they have no difficulty in finding a basis for voiding it.

Wisconsin courts have not had occasion to decide this question squarely but by their dicta they indicate that they would hold such contracts void. *Ryan* v. *Dockery,* 134 Wis. 431 (1908); *Rowell* v. *Barber,* 142 Wis. 304, 318 (1910); *Perkinson* v. *Clarke,* 135 Wis. 584, 591 (1908); *Estate of Simonson,* 164 Wis. 590, 594 (1917). *In Ryan* v. *Dockery, supra,* a husband contracted to care for, nurse and support his blind wife. The court, stated: that the husband could receive no remuneration for the care of his invalid wife, "The law requires a husband to support, care for, and provide comforts for his wife in sickness as well as in health . . . The husband cannot shirk it even by contract with his wife." A husband and wife, it was said, may contract with each other before marriage as to their mutual property rights, but they cannot vary the personal duties and obligations to each other which result from the marriage contract itself.

ROBERT T. MCGRAW.

Evidence—Use of Scientific Books under the Hearsay Rule.—The defendant was indicted for larceny by false pretenses. The State alleged that he had fraudulently induced the complainant to transfer to him certain valuable property by the aid of false representations. It was claimed that the defendant made certain claims as to the character or quality of certain mining property, held